



TENNESSEE VALLEY AUTHORITY

Management of Floating Cabins

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of record of decision.

SUMMARY: The Tennessee Valley Authority (TVA) has adopted a policy to prohibit the mooring of new floating cabins on its reservoirs and allow floating cabins that meet minimum standards, consistent with Section 9b of the TVA Act and Alternative B1 in the Floating Houses Policy Review Final Environmental Impact Statement (EIS) issued in February 2016.

FOR FURTHER INFORMATION CONTACT: David B. Harrell, Tennessee Valley Authority, 400 W. Summit Hill Drive WT 11D-K, Knoxville, Tennessee 37902.

Telephone: 865-632-1327. Email: dbharrell@tva.gov or fc@tva.gov.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1505.2) and TVA procedures for implementing the National Environmental Policy Act (NEPA).

TVA is a multi-purpose federal agency that has been charged by Congress with promoting the wise use and conservation of the resources of the Tennessee Valley region, including the Tennessee River System. In carrying out this mission, TVA operates a system of dams and reservoirs on the Tennessee River and its tributaries for the purposes of navigation, flood control, and power production. Consistent with its mission, TVA also uses the system to improve water quality and water supply and to provide a wide range of public benefits, including recreation and natural resource stewardship.

To promote the unified development and regulation of the Tennessee River System, Congress directed TVA to approve obstructions across, along, or in the river system under Section 26a of the TVA Act. "Obstruction" is a broad term that includes, by

way of example, boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluents, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and floating cabins. TVA also owns, as agent for the United States, much of the shoreland and inundated land along and under its reservoir system. In addition to TVA's Section 26a jurisdiction and the permit conditions issued pursuant to such jurisdiction, TVA has conditions and covenants in approved land use agreements with commercial marina operators and land and shoreline management policies that stipulate or restrict how TVA property and shoreline areas can be used.

In 1971, TVA amended its Section 26a regulations at 18 CFR Part 1304 to prohibit all new nonnavigable houseboats. Since 1971, TVA has made minor changes to its regulations affecting nonnavigable houseboats, most notably in 1978, when TVA reiterated the prohibition of nonnavigable houseboats except for those in existence on or before February 15, 1978. TVA developed the following criteria in its regulations to distinguish between navigable vessels and prohibited, nonnavigable houseboats:

1. Built on a boat hull or on two or more pontoons;
2. Equipped with a motor and rudder controls located at a point on the houseboat from which there is forward visibility over a 180-degree range;
3. Compliant with all applicable State and Federal requirements relating to vessels;
4. Registered as a vessel in the State of principal use; and
5. State registration numbers clearly displayed on the vessel.

In recent years, numerous TVA reservoirs have experienced an accelerated growth in the number of a new, unpermitted type of obstruction, referred to as floating houses or cabins, which are designed and used primarily for human habitation or occupation and not designed and used primarily for navigation and transportation on the

water. (Although TVA has used the term floating houses in the past, including in the EIS, TVA now refers to these structures as floating cabins.) While floating cabins may have some attributes of real watercraft, the structures neither resemble nor have the performance characteristics of navigable boats and are in fact a modern version of the older nonnavigable houseboats that TVA prohibited. While this growth has generated additional sources of revenue for commercial marina operators, the proliferation of these structures has resulted in unanticipated uses of the reservoir system and has raised concerns about impacts to public health and safety, public recreation, navigation, and the environment.

Alternatives Considered

TVA considered six management alternatives in the Draft EIS and the Final EIS. The management alternatives range from an alternative that would require all nonnavigable houseboats and floating cabins to be removed from TVA reservoirs to an alternative which allows existing nonnavigable houseboats and floating cabins to remain on TVA reservoirs in perpetuity and allows for new floating cabins on all TVA reservoirs. The alternatives considered by TVA were:

The No Action Alternative - TVA would use discretion in enforcing its Section 26a regulations and would address specific problems caused by the mooring and use of these structures on a case-by-case basis.

Alternative A - TVA would approve and issue permits for the mooring of existing and new floating cabins that meet new minimum standards within permitted marina harbor limits, while noncompliant floating cabins would be removed from the reservoir. TVA would change its regulations to set minimum standards for safety and wastewater issues and would increase enforcement of the standards. Existing permits issued to nonnavigable houseboats would remain valid and would not be subject to new standards if they comply with existing permit conditions.

Alternative B1 - TVA would approve and issue permits for the mooring of existing floating cabins that meet new minimum standards within permitted marina harbor limits. Permitted nonnavigable houseboats in compliance with their permits would continue to be allowed. TVA would prohibit new floating cabins and update its regulations to clarify that floating cabins are deemed nonnavigable. In the Draft EIS, TVA stated that its preference was to implement either Alternative B1 or B2 as its policy.

Alternative B2 - TVA would approve existing floating cabins that meet new minimum standards and allow mooring within permitted marina harbor limits for a limited time period, after which all floating cabins must be removed from TVA reservoirs. TVA would continue to allow existing permitted nonnavigable houseboats that are compliant with their permit conditions but would require that they also be removed from TVA reservoirs within the time period. TVA would prohibit new floating cabins. In the Draft EIS, Alternative B2 included a 30-year sunset period by which time these structures would be removed. In the Final EIS, TVA identified Alternative B2 as its preferred policy and proposed a 20-year sunset period.

Alternative C - TVA would continue to allow permitted nonnavigable houseboats that comply with their current permit conditions. TVA would prohibit new and existing floating cabins. TVA would require removal of all unpermitted floating cabins and permitted nonnavigable houseboats that are noncompliant with their permit conditions in accordance with 18 CFR 1304.406. TVA would amend its regulations to clarify its navigability criteria but would not issue new standards.

Alternative D - TVA would use its existing Section 26a regulations and property rights to remove existing floating cabins and noncompliant nonnavigable houseboats and to stop the mooring of new floating cabins on its reservoirs. TVA also would use the conditions and covenants in its land use agreements with marina operators to implement this approach.

Environmentally Preferable Alternative

Alternative B2 is the alternative most likely to result in the fewest environmental impacts over time because all floating cabins and nonnavigable houseboats would eventually be removed from TVA reservoirs and environmental impacts associated with the mooring and use of these structures would cease after that period.

Public Involvement

TVA published a notice of intent to prepare the EIS in the *Federal Register* on April 14, 2014. TVA sought input from Federal and state agencies, Federally recognized Indian tribes, local organizations and individuals during a 90-day public scoping period. Public meetings were held in Jasper, Parsons, Kingsport, and Lafollette, Tennessee, and in Bryson City, North Carolina, with more than 200 attendees in total. The most common issues raised during the scoping period related to electrical safety, anchoring and mooring practices, water quality, the economic and financial importance of these structures to owners and marina operators, and the need for minimum standards, inspections, and enforcements. TVA also received recommendations for future management and policy alternatives. TVA prepared and published a Scoping Report that detailed the outreach and input during this period.

The NOA of the Draft EIS was published in the *Federal Register* on June 12, 2015. TVA held public meetings on the Draft EIS in July and August 2016 in Lafollette, Parsons, and Johnson City, Tennessee, and in Bryson City, North Carolina, and accepted comments until August 25, 2015. TVA received 151 comment submissions on the Draft EIS and provided responses in the Final EIS. In response to numerous substantive comments, TVA made revisions and corrections to the EIS. After considering the public's feedback on the Draft EIS and further internal deliberation, TVA modified Alternative B2 by applying a shorter period of time by which all nonnavigable houseboats and floating cabins must be removed from TVA reservoirs.

The NOA of the Final EIS was published in the *Federal Register* on February 26, 2016. In the Final EIS, TVA identified Alternative B2 as its preferred floating cabins policy alternative and stated its intent to formally establish regulations to implement the policy. After the publication of the NOA and prior to the TVA Board of Directors (Board) meeting on May 5, 2016, TVA staff and the Board received several hundred comment submissions primarily from owners of nonnavigable houseboats and floating cabins expressing opposition to the proposal to remove these structures after a 20-year period. Most individuals, however, stated that they recognized the need for greater oversight of floating cabins by TVA and for new standards. Elected officials, marina owners and operators, and several organizations also contacted TVA to state their opposition to the sunset provision. A few commenters asserted that the EIS does not conclude that nonnavigable houseboats and floating cabins have an effect on the environment (in particular, reservoir water quality), navigation, or the public's use of reservoirs. While these commenters questioned the conclusions of TVA's environmental and economic analyses, the individuals did not submit additional information or scientific data for TVA to consider. TVA also received a petition with over 3,600 signatures and almost 950 comments from individuals opposing the sunset provision. Generally, these individuals supported Alternative B1.

At the May 5, 2016 meeting of the Board in Buchanan, Tennessee, 47 individuals spoke during the public listening session. Most speakers opposed the sunset provision of Alternative B2. Several speakers expressed support of the proposal.

Decision

At the May 2016 meeting, the Board approved Alternative B2, with some revisions, as TVA's policy for the management of nonnavigable houseboats and floating cabins, but chose to apply a 30-year sunset period rather than the 20-year period proposed in the Final EIS. The Board's decision adopted a policy to prohibit new floating cabins

and allow existing non-navigable houseboats and floating cabins to remain in place for the 30-year period. The Board restated its earlier determinations that these structures pose safety, navigation, and water pollution risks and primarily benefit their owners at the expense of the public's right to use and enjoy public waters. The Board also directed staff to amend TVA's Section 26a regulations to implement the new policy, establish environmental and safety standards, and to institute a registration and inspection fee system for nonnavigable houseboats and existing floating cabins to secure the resources needed to enforce new standards and permit requirements.

On December 16, 2016, prior to TVA's issuance of a Record of Decision to reflect the Board's decision, the United States Congress enacted the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act) including Title IV Section 5003, which amended the TVA Act to include Section 9b. This new section of the TVA Act provides that TVA may approve and allow the use of floating cabins on waters under the jurisdiction of TVA as of December 16, 2016, if the floating cabin is maintained to reasonable health, safety and environmental standards, as required by the Board and if the owner pays a compliance fee if assessed by TVA. The WIIN Act stipulates that TVA may not require the removal of a floating cabin that was located on the Tennessee River System as of December 16, 2016: (1) For a period of 15 years if it was granted a permit by TVA before enactment, or (2) for a period of 5 years if it was not granted a permit by TVA before enactment. It further stipulates that TVA may establish regulations to prevent the construction of new floating cabins.

Consistent with the provisions of the WIIN Act, TVA completed two rulemaking processes to establish regulations to implement these provisions. In August 2018, TVA completed a rulemaking process to amend its regulations that govern floating cabins to clarify the types of structures that TVA will regulate as floating cabins and to prohibit new floating cabins from mooring on the Tennessee River System after December 16,

2016 (83 FR 44467, August 31, 2018). In September 2021, TVA completed a second rulemaking process to address the permitting process for existing floating cabins and establish health, safety, and environmental standards (86 FR 50625, September 10, 2021). These rules become effective on October 12, 2021.

During its environmental review, a primary environmental issue of concern was how floating cabin wastewater would be managed. Among the standards included in the new rules are requirements pertaining to water discharge, sewage, and wastewater, to ensure compliance with all applicable federal, state, and local laws and regulations. If a floating cabin is documented to be in violation of any federal, state, or local discharge or water quality regulation by the respective regulatory agency, TVA will have the authority to revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements.

Because some provisions of the Board's approved alternative (Alternative B2) are inconsistent with provisions of the WIIN Act, TVA has decided to manage floating cabins in a manner that is substantively similar with Alternative B1 in the EIS, to the extent consistent with the WIIN Act. TVA will permit the mooring of existing floating cabins that meet minimum standards within permitted marina harbor limits. In addition, permitted nonnavigable houseboats in compliance with their permits would continue to be allowed.

Through the rulemaking processes, several standards established by TVA differ in minor ways from several of the potential standards included in the EIS, which served to assist TVA in analyzing the potential impacts associated with floating cabin management. In the final regulations, due to the elimination by the WIIN Act of the sunset period, TVA will require that owners of all pre-1978 nonnavigable houseboats be in compliance with the new standards established during the rulemaking, rather than maintain compliance

with the previous permit conditions as contemplated in the EIS. Applying the new standards to older vessels has the potential to reduce environmental impacts because the new standards would be more stringent than the original permit conditions. In addition, at this time TVA will not apply an annual administrative fee to floating cabin owners and will lengthen the period of time provided to owners to make necessary upgrades to floating cabins to bring them into compliance with current standards; these provisions would result in minor reductions in the economic impacts to floating cabin owners that are described in the EIS. In the final regulations, TVA would allow exchanges or combinations of up to 1,000 square-foot maximum footprint of the cabin, as contemplated in the EIS, and up to another 400 square feet of attached structures (such as docks and boat slips). While the total spatial limit would be marginally greater than what was contemplated in the EIS, the intent of the exchange program has not changed, and TVA anticipates that the program would reduce or at least maintain the current total footprint of floating cabins and attached structures on reservoirs.

TVA also notes that since completion of the Final EIS in 2016, TVA staff conducted additional surveys of floating cabins and now estimate that as many as 20% more floating cabins are present on TVA reservoirs than estimated in the EIS (1,800). The exact number of cabins is difficult to determine, however. A greater number of floating cabins would increase the impacts described in the EIS. However, because impacts would be proportionately greater across the alternatives, the increase in the estimated number of floating cabins is unlikely to result in a change to conclusions made by TVA in its analysis.

TVA has considered whether this higher estimate and the minor differences between the established standards and the potential standards identified in the EIS necessitate the supplementation of the EIS. TVA has determined that such supplementation is not necessary because the changes are not substantial and the new

information is not significant as is relevant to environmental concerns. The information would not meaningfully alter TVA's analysis of impacts.

Mitigation Measures

During the environmental review, TVA identified and considered ways in which the impacts associated with the mooring and use of nonnavigable houseboats and floating cabins could be reduced and mitigated and included in the alternatives a number of proposals to reduce or eliminate ongoing or potential future impacts. TVA would require that owners of these structures adhere to permit conditions and minimum standards, many of which are intended to mitigate potential impacts to the environment. These minimum standards have been established through formal rulemaking processes and address water quality, flotation materials, public safety mooring practices, size, and navigation.

All floating cabins, including nonnavigable houseboats that have been previously permitted by TVA, must comply with the new standards by a specified deadline. Non-compliance with these terms could result in the termination or denial of the permit and removal from the reservoir, consistent with timeframes identified in the WIIN Act. The requirements and the successful implementation of an enforcement and compliance system will reduce environmental impacts associated with the mooring and use of these structures on TVA reservoirs. Because this is a programmatic NEPA review, measures to reduce potential environmental impacts of site-specific activities associated with this policy were not identified. Additional environmental reviews would be required if changes to specific marina operations are proposed affecting nonnavigable houseboats and floating cabins and additional mitigation measures may be identified.

To address potential effects of implementing the policy on cultural and historic resources, TVA completed a programmatic agreement in May 2016 with the State Historic Preservation Officers (SHPO) of Alabama, Georgia, Kentucky, North Carolina, Tennessee and Virginia. This programmatic agreement was amended and executed in

January 2021. Under the agreement, TVA will consult with the appropriate SHPO and consulting parties when reviewing either plans submitted to TVA by marina owners related to harbor limits or plans for individual floating cabin owners moored outside of marina harbor limits.

Authority: 40 CFR 1505.2.

Allen A. Clare,

Vice President, River and Resources Stewardship.

[FR Doc. 2021-19999 Filed: 9/15/2021 8:45 am; Publication Date: 9/16/2021]